

AMENDED IN SENATE APRIL 17, 2002

SENATE BILL

No. 1876

Introduced by Senator Bowen

February 22, 2002

~~An act to amend Section 352 of, to add Sections 345.1, 345.3, and 345.5 to, to repeal Section 346 of, to repeal Article 2 (commencing with Section 334), Article 4 (commencing with Section 355), and Article 5~~
An act to amend Sections 348, 352, 372, and 377 of, to amend and renumber Section 454.1 of, to add Sections 334, 337, 341.5, 367.5, 761.7, 857, and 858 to, to repeal Sections 330, 346, 367, 367.7, 368, 369, 370, 371, 373, 376, 378, and 397 of, to repeal Article 2 (commencing with Section 334), and Article 5 (commencing with Section 359) of Chapter 2.3 of Part 1 of, and to repeal and add Section 350 of, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1876, as amended, Bowen. ~~Electricity Oversight Board; Independent System Operator; Power Exchange~~ *Electrical restructuring.*

(1) The existing restructuring of the electrical services industry within the Public Utilities Act provides for the establishment of an Independent System Operator and a Power Exchange as separately incorporated public benefit nonprofit corporations. An Electricity Oversight Board (Oversight Board) is also established to oversee the Independent System Operator and the Power Exchange in order to ensure the success of electric industry restructuring and to ensure a reliable supply of electricity in the transition to a new market structure. ~~Pursuant to an order of the Federal Energy Regulatory Commission, the Power Exchange has ceased to function.~~ The Oversight Board is

granted various powers including, but not limited to, requiring the revision of the bylaws of the Independent System Operator and the approval of the entry of the Independent System Operator into a multistate entity or a regional organization.

This bill would repeal those provisions establishing, and granting powers to, the Oversight Board. The bill would require the Independent System Operator to revise its own bylaws, and would require ~~the Legislature to approve~~ *legislative approval prior to* the entry of the Independent System Operator into a multistate entity or a regional organization. Because any violation of the Public Utilities Act is a crime, the bill, by establishing new duties for the Independent System Operator, would impose a state-mandated local program by changing the definition of a crime. ~~The bill would repeal certain provisions relating to the Power Exchange.~~

(2) *The existing restructuring requires the Public Utilities Commission to establish an effective mechanism that ensures recovery, by electrical corporations, of certain transition costs from their customers, as determined by the commission, including costs for generation related assets and obligations, that were being collected in commission-approved rates on December 20, 1995, that may become uneconomic as a result of a competitive generation market. The restructuring requires each electrical corporation to propose a cost recovery plan for the recovery of the uneconomic costs. The restructuring authorizes electrical corporations to apply to the commission for an order determining that the uneconomic costs not be collected from a particular class of customer or category of electricity consumption. The restructuring also authorizes electrical corporations to recover utility generation related plant and regulatory assets to the extent that they remain unrecovered after December 31, 2001, due to the electrical corporations' ability to recover costs related to the implementation of direct access, the Power Exchange, and the Independent System Operator. The restructuring also requires the commission to authorize new optional rate schedules and tariffs, including new service offerings, that accurately reflect the loads, locations, conditions of service, cost of service, and market opportunities of customer classes and subclasses.*

This bill would delete these provisions.

(3) *The existing restructuring requires the commission to ensure that public utility generation assets remain dedicated to service for the benefit of California ratepayers.*



This bill would recast this provision to require the commission to ensure that utility retained generation remain dedicated to service for the benefit of California ratepayers and would defined “utility retained generation” as utility owned generation, qualifying facility contracts, and other bilateral contracts entered into prior to January 17, 2001. The bill would exempt the transfer or sale of generation plants that are located outside the state and are owned exclusively by companies not based in the state from these provisions. The bill would require the commission to establish rates designed to provide the public utility electrical corporation with a reasonable opportunity to recover the reasonable costs of producing power and ancillary service from utility retained generation dedicated to the service of bundled service customers, operating and capital costs, as defined, and a reasonable return of and on the electrical corporation’s depreciated book cost of investments in retained generation assets, as defined.

(4) The existing restructuring requires the commission to authorize an electrical corporation that is also a gas corporation and served fewer than four million customers as of December 20, 1995, to implement a rate cap mechanism that reflects price changes in the fuel market under certain circumstances.

This bill would delete these provisions.

(5) Under existing law, the Public Utilities Act, the commission is authorized to supervise and regulate every public utility in the state and to take all actions that are necessary and convenient in the exercise of that power and jurisdiction. The act also establishes the California Consumer Power and Conservation Financing Authority to finance generating facilities and other energy related projects and programs.

This bill would grant the commission jurisdiction over any corporation or holding company, as defined, that owns, controls, operates of manages a public utility, for the limited purpose of monitoring and enforcing any promises, commitments, conditions, or written representations made to the commission or to the ratepayers of the public utility.

This bill would prohibit an electrical corporation from executing a sale, assignment, transfer, or other disposition of assets with a value in excess of \$10,000,000 unless the California Consumer Power and Conservation Financing Authority is granted a right of first refusal to purchase the assets at a price equivalent to the proposed transfer price. The bill would require any gain or loss on sale associated with the sale, transfer, or disposition of assets be allocated exclusively to the



ratepayers serviced by the electrical corporation. Since a violation of the act is a crime under existing provisions of law, the bill would impose a state-mandated local program by expanding the definition of a crime.

This bill would establish a Ratepayer Refund Account for each electrical corporation and would require all refunds recovered by an electrical corporation resulting from any litigation or agreement relative to the charging of excessive costs for wholesale power by electric power generators and suppliers be credited to the electrical corporation's account and would provide that those funds be held in trust on behalf of the ratepayer.

(6) This bill would declare that its provisions are severable.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 330 of the Public Utilities Code is
2 repealed.

3 ~~330. In order to provide guidance in carrying out this chapter,~~
4 ~~the Legislature finds and declares all of the following:~~

5 ~~(a) It is the intent of the Legislature that a cumulative rate~~
6 ~~reduction of at least 20 percent be achieved not later than April 1,~~
7 ~~2002, for residential and small commercial customers, from the~~
8 ~~rates in effect on June 10, 1996. In determining that the April 1,~~
9 ~~2002, rate reduction has been met, the commission shall exclude~~
10 ~~the costs of the competitively procured electricity and the costs~~
11 ~~associated with the rate reduction bonds, as defined in Section 840.~~

12 ~~(b) The people, businesses, and institutions of California spend~~
13 ~~nearly twenty-three billion dollars (\$23,000,000,000) annually on~~
14 ~~electricity, so that reductions in the price of electricity would~~
15 ~~significantly benefit the economy of the state and its residents.~~

16 ~~(c) The Public Utilities Commission has opened rulemaking~~
17 ~~and investigation proceedings with regard to restructuring~~

1 ~~California's electric power industry and reforming utility~~
2 ~~regulation.~~

3 ~~(d) The commission has found, after an extensive public~~
4 ~~review process, that the interests of ratepayers and the state as a~~
5 ~~whole will be best served by moving from the regulatory~~
6 ~~framework existing on January 1, 1997, in which retail electricity~~
7 ~~service is provided principally by electrical corporations subject~~
8 ~~to an obligation to provide ultimate consumers in exclusive service~~
9 ~~territories with reliable electric service at regulated rates, to a~~
10 ~~framework under which competition would be allowed in the~~
11 ~~supply of electric power and customers would be allowed to have~~
12 ~~the right to choose their supplier of electric power.~~

13 ~~(e) Competition in the electric generation market will~~
14 ~~encourage innovation, efficiency, and better service from all~~
15 ~~market participants, and will permit the reduction of costly~~
16 ~~regulatory oversight.~~

17 ~~(f) The delivery of electricity over transmission and~~
18 ~~distribution systems is currently regulated, and will continue to be~~
19 ~~regulated to ensure system safety, reliability, environmental~~
20 ~~protection, and fair access for all market participants.~~

21 ~~(g) Reliable electric service is of utmost importance to the~~
22 ~~safety, health, and welfare of the state's citizenry and economy. It~~
23 ~~is the intent of the Legislature that electric industry restructuring~~
24 ~~should enhance the reliability of the interconnected regional~~
25 ~~transmission systems, and provide strong coordination and~~
26 ~~enforceable protocols for all users of the power grid.~~

27 ~~(h) It is important that sufficient supplies of electric generation~~
28 ~~will be available to maintain the reliable service to the citizens and~~
29 ~~businesses of the state.~~

30 ~~(i) Reliable electric service depends on conscientious~~
31 ~~inspection and maintenance of transmission and distribution~~
32 ~~systems. To continue and enhance the reliability of the delivery of~~
33 ~~electricity, the Independent System Operator and the commission,~~
34 ~~respectively, should set inspection, maintenance, repair, and~~
35 ~~replacement standards.~~

36 ~~(j) It is the intent of the Legislature that California enter into a~~
37 ~~compact with western region states. That compact should require~~
38 ~~the publicly and investor-owned utilities located in those states,~~
39 ~~that sell energy to California retail customers, to adhere to~~

1 enforceable standards and protocols to protect the reliability of the
2 interconnected regional transmission and distribution systems.

3 (k) In order to achieve meaningful wholesale and retail
4 competition in the electric generation market, it is essential to do
5 all of the following:

6 (1) Separate monopoly utility transmission functions from
7 competitive generation functions, through development of
8 independent, third-party control of transmission access and
9 pricing.

10 (2) Permit all customers to choose from among competing
11 suppliers of electric power.

12 (3) Provide customers and suppliers with open,
13 nondiscriminatory, and comparable access to transmission and
14 distribution services.

15 *(l) The commission has properly concluded that:*

16 (1) This competition will best be introduced by the creation of
17 an Independent System Operator and an independent Power
18 Exchange.

19 (2) Generation of electricity should be open to competition.

20 (3) There is a need to ensure that no participant in these new
21 market institutions has the ability to exercise significant market
22 power so that operation of the new market institutions would be
23 distorted.

24 (4) These new market institutions should commence
25 simultaneously with the phase in of customer choice, and the
26 public will be best served if these institutions and the
27 nonbypassable transition cost recovery mechanism referred to in
28 subdivisions (s) to (w), inclusive, are in place simultaneously and
29 no later than January 1, 1998.

30 (m) It is the intention of the Legislature that California's
31 publicly owned electric utilities and investor-owned electric
32 utilities should commit control of their transmission facilities to
33 the Independent System Operator. These utilities should jointly
34 advocate to the Federal Energy Regulatory Commission a pricing
35 methodology for the Independent System Operator that results in
36 an equitable return on capital investment in transmission facilities
37 for all Independent System Operator participants.

38 (n) Opportunities to acquire electric power in the competitive
39 market must be available to California consumers as soon as

1 practicable, but no later than January 1, 1998, so that all customers
2 can share in the benefits of competition.

3 ~~(o) Under the existing regulatory framework, California's~~
4 ~~electrical corporations were granted franchise rights to provide~~
5 ~~electricity to consumers in their service territories.~~

6 ~~(p) Consistent with federal and state policies, California~~
7 ~~electrical corporations invested in power plants and entered into~~
8 ~~contractual obligations in order to provide reliable electrical~~
9 ~~service on a nondiscriminatory basis to all consumers within their~~
10 ~~service territories who requested service.~~

11 ~~(q) The cost of these investments and contractual obligations~~
12 ~~are currently being recovered in electricity rates charged by~~
13 ~~electrical corporations to their consumers.~~

14 ~~(r) Transmission and distribution of electric power remain~~
15 ~~essential services imbued with the public interest that are provided~~
16 ~~over facilities owned and maintained by the state's electrical~~
17 ~~corporations.~~

18 ~~(s) It is proper to allow electrical corporations an opportunity~~
19 ~~to continue to recover, over a reasonable transition period, those~~
20 ~~costs and categories of costs for generation-related assets and~~
21 ~~obligations, including costs associated with any subsequent~~
22 ~~renegotiation or buyout of existing generation-related contracts,~~
23 ~~that the commission, prior to December 20, 1995, had authorized~~
24 ~~for collection in rates and that may not be recoverable in market~~
25 ~~prices in a competitive generation market, and appropriate~~
26 ~~additions incurred after December 20, 1995, for capital additions~~
27 ~~to generating facilities existing as of December 20, 1995, that the~~
28 ~~commission determines are reasonable and should be recovered,~~
29 ~~provided that the costs are necessary to maintain those facilities~~
30 ~~through December 31, 2001. In determining the costs to be~~
31 ~~recovered, it is appropriate to net the negative value of above~~
32 ~~market assets against the positive value of below market assets.~~

33 ~~(t) The transition to a competitive generation market should be~~
34 ~~orderly, protect electric system reliability, provide the investors in~~
35 ~~these electrical corporations with a fair opportunity to fully~~
36 ~~recover the costs associated with commission approved~~
37 ~~generation-related assets and obligations, and be completed as~~
38 ~~expeditiously as possible.~~

39 ~~(u) The transition to expanded customer choice, competitive~~
40 ~~markets, and performance-based ratemaking as described in~~

~~Decision 95-12-063, as modified by Decision 96-01-009, of the Public Utilities Commission, can produce hardships for employees who have dedicated their working lives to utility employment. It is preferable that any necessary reductions in the utility workforce directly caused by electrical restructuring, be accomplished through offers of voluntary severance, retraining, early retirement, outplacement, and related benefits. Whether workforce reductions are voluntary or involuntary, reasonable costs associated with these sorts of benefits should be included in the competition transition charge.~~

~~(v) Charges associated with the transition should be collected over a specific period of time on a nonbypassable basis and in a manner that does not result in an increase in rates to customers of electrical corporations. In order to insulate the policy of nonbypassability against incursions, if exemptions from the competition transition charge are granted, a firewall shall be created that segregates recovery of the cost of exemptions as follows:~~

~~(1) The cost of the competition transition charge exemptions granted to members of the combined class of residential and small commercial customers shall be recovered only from those customers.~~

~~(2) The cost of the competition transition charge exemptions granted to members of the combined class of customers other than residential and small commercial customers shall be recovered only from those customers. The commission shall retain existing cost allocation authority provided that the firewall and rate freeze principles are not violated.~~

~~(w) It is the intent of the Legislature to require and enable electrical corporations to monetize a portion of the competition transition charge for residential and small commercial consumers so that these customers will receive rate reductions of no less than 10 percent for 1998 continuing through 2002. Electrical corporations shall, by June 1, 1997, or earlier, secure the means to finance the competition transition charge by applying concurrently for financing orders from the Public Utilities Commission and for rate reduction bonds from the California Infrastructure and Economic Development Bank.~~

~~(x) California's public utility electrical corporations provide substantial benefits to all Californians, including employment and~~

support of the state's economy. Restructuring the electric services industry pursuant to the act that added this chapter will continue these benefits, and will also offer meaningful and immediate rate reductions for residential and small commercial customers, and facilitate competition in the supply of electric power.

SEC. 2. Article 2 (commencing with Section 334) of Chapter 2.3 of Part 1 of the Public Utilities Code is repealed.

SEC. 2.—Section 345.1 is added to the Public Utilities Code, to read:

345.1.—

SEC. 3. Section 334 is added to the Public Utilities Code, to read:

334. The Legislature finds and declares that, in order to ensure the success of ~~electric~~ *the electrical* industry restructuring in the transition to a new market structure, it is important to ensure a reliable supply of electricity. Reliable electric service is of paramount importance to the safety, health, and comfort of the people of California. Transmission connections among electric utilities allow them to share generation resources and reduce the number of powerplants necessary to maintain a reliable system. The connections among utilities also create exposure to events that can cause widespread and extended transmission and service outages that reach far beyond the originating utility service area. California utilities and those in the western United States voluntarily adhere to reliability standards developed by the Western Systems Coordinating Council. The economic cost of extended electricity outages, such as those that occurred in California and throughout the Western Systems Coordinating Council on July 2, 1996, and August 10, 1996, to California's residential, commercial, agricultural, and industrial customers is significant. The proposed restructuring of the electricity industry would transfer responsibility for ensuring short- and long-term reliability away from electric utilities and regulatory bodies to the Independent System Operator and various market-based mechanisms. The Legislature has an interest in ensuring that the change in the locus of responsibility for reliability does not expose California citizens to undue economic risk in connection with system reliability.

SEC. 3.—Section 345.3 is added to the Public Utilities Code, to read:

1 ~~345.3.—~~

2 *SEC. 4. Section 337 is added to the Public Utilities Code, to*
3 *read:*

4 337. (a) The Independent System Operator governing board
5 shall be composed of a five-member independent governing board
6 of directors appointed by the Governor and subject to confirmation
7 by the Senate. Any reference in this chapter or in any other
8 provision of law to the Independent System Operator governing
9 board means the independent governing board appointed under
10 this subdivision.

11 (b) A member of the independent governing board appointed
12 under subdivision (a) may not be affiliated with any actual or
13 potential participant in any market administered by the
14 Independent System Operator.

15 (c) (1) All appointments shall be for three-year terms.

16 (2) There is no limit on the number of terms that may be served
17 by any member.

18 (d) The Independent System Operator shall revise its articles of
19 incorporation and bylaws in accordance with this section, and shall
20 make filings with the Federal Energy Regulatory Commission as
21 it determines to be necessary.

22 (e) For the purposes of the initial appointments to the
23 Independent System Operator governing board, as provided in
24 subdivision (a), the Governor shall appoint one member to a
25 one-year term, two members to a two-year term, and two members
26 to a three-year term.

27 ~~SEC. 4.—Section 345.5 is added to the Public Utilities Code, to~~
28 ~~read:~~

29 ~~345.5.—~~

30 *SEC. 5. Section 341.5 is added to the Public Utilities Code, to*
31 *read:*

32 341.5. The Independent System Operator bylaws shall
33 contain provisions that identify matters within state jurisdiction.
34 The bylaws shall also contain provisions that state that the
35 approval function of California's bylaws with respect to the
36 matters within state jurisdiction do not preclude the Federal
37 Energy Regulatory Commission from taking any action necessary
38 to address undue discrimination or other violations of the Federal
39 Power Act (16 U.S.C. Sec. 791a et seq.) or to exercise any other
40 commission responsibility under the Federal Power Act. In taking

any action, the Federal Energy Regulatory Commission shall give due respect to California's jurisdictional interests in the functions of the Independent System Operator, and shall attempt to accommodate state interests to the extent those interests are not inconsistent with the Federal Energy Regulatory Commission's statutory responsibilities. The bylaws shall state that any future agreement regarding the apportionment of the Independent System Operator board appointment function among participating states associated with the expansion of the Independent System Operator into a multistate entity shall be filed with the Federal Energy Regulatory Commission pursuant to Section 205 of the Federal Power Act (16 U.S.C. Sec. 824d).

~~SEC. 5.—~~

SEC. 6. Section 346 of the Public Utilities Code is repealed.

~~SEC. 6.—~~

SEC. 7. *Section 348 of the Public Utilities Code is amended to read:*

348. The Independent System Operator shall adopt inspection, maintenance, repair, and replacement standards for the transmission facilities under its control no later than September 30, 1997. The standards, which shall be performance or prescriptive standards, or both, as appropriate, for each substantial type of transmission equipment or facility, shall provide for high quality, safe, and reliable service. In adopting its standards, the Independent System Operator shall consider: cost, local geography and weather, applicable codes, national electric industry practices, sound engineering judgment, and experience. The Independent System Operator shall also adopt standards for reliability, and safety during periods of emergency and disaster. ~~The Independent System Operator shall report to the Oversight Board, at such times as the Oversight Board may specify, on the development and implementation of the standards in relation to facilities under the operational control of the Independent System Operator.~~ The Independent System Operator shall require each transmission facility owner or operator to report annually on its compliance with the standards. That report shall be made available to the public.

SEC. 8. Section 350 of the Public Utilities Code is repealed.

~~SEC. 7.—~~

1 *SEC. 9.* Section 350 is added to the Public Utilities Code, to
2 read:

3 350. (a) It is the intent of the Legislature to provide for the
4 development of regional electricity transmission markets in the
5 western states and to improve the access of consumers served by
6 the Independent System Operator to those markets.

7 (b) The preferred means by which the voluntary evolution
8 described in subdivision (a) should occur is through the adoption
9 of a regional compact or other comparable agreement among
10 cooperating party states, the retail customers of which states would
11 reside within the geographic territories served by the Independent
12 System Operator.

13 (c) The agreement described in subdivision (b) should provide
14 for all of the following:

15 (1) An equitable process for the appointment or confirmation
16 by party states of members of the governing boards of the
17 Independent System Operator.

18 (2) A respecification of the size, structure, representation,
19 eligible membership, nominating procedures, and member terms
20 of service of the governing boards of the Independent System
21 Operator.

22 (3) Mechanisms by which each party state, jointly or
23 separately, can oversee effectively the actions of the Independent
24 System Operator as those actions relate to ensuring electricity
25 system reliability within the party state and to matters that affect
26 electricity sales to the retail customers of the party state or
27 otherwise affect the general welfare of the electricity consumers
28 and the general public of the party state.

29 (4) The adherence by publicly owned and investor-owned
30 utilities located in party states to enforceable standards and
31 protocols to protect the reliability of the interconnected regional
32 transmission and distribution systems.

33 ~~SEC. 8.—~~

34 *SEC. 10.* Section 352 of the Public Utilities Code is amended
35 to read:

36 352. The Independent System Operator may not enter into a
37 multistate entity or a regional organization as authorized in Section
38 350 unless that entry is approved by the Legislature.

39 ~~SEC. 9.—Article 4 (commencing with Section 355) of Chapter~~
40 ~~2.3 of Part 1 of the Public Utilities Code is repealed.~~

~~SEC. 10.—~~

~~SEC. 11.~~ Article 5 (commencing with Section 359), of Chapter 2.3 of Part 1 of the Public Utilities Code is repealed.

~~SEC. 11.—~~

~~SEC. 12.~~ *Section 367 of the Public Utilities Code is repealed.*

~~367.—The commission shall identify and determine those costs and categories of costs for generation-related assets and obligations, consisting of generation facilities, generation-related regulatory assets, nuclear settlements, and power purchase contracts, including, but not limited to, restructurings, renegotiations or terminations thereof approved by the commission, that were being collected in commission-approved rates on December 20, 1995, and that may become uneconomic as a result of a competitive generation market, in that these costs may not be recoverable in market prices in a competitive market, and appropriate costs incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that these additions are necessary to maintain the facilities through December 31, 2001. These uneconomic costs shall include transition costs as defined in subdivision (f) of Section 840, and shall be recovered from all customers or in the case of fixed transition amounts, from the customers specified in subdivision (a) of Section 841, on a nonbypassable basis and shall:~~

~~(a) Be amortized over a reasonable time period, including collection on an accelerated basis, consistent with not increasing rates for any rate schedule, contract, or tariff option above the levels in effect on June 10, 1996; provided that, the recovery shall not extend beyond December 31, 2001, except as follows:~~

~~(1) Costs associated with employee-related transition costs as set forth in subdivision (b) of Section 375 shall continue until fully collected; provided, however, that the cost collection shall not extend beyond December 31, 2006.~~

~~(2) Power purchase contract obligations shall continue for the duration of the contract. Costs associated with any buy-out, buy-down, or renegotiation of the contracts shall continue to be collected for the duration of any agreement governing the buy-out, buy-down, or renegotiated contract; provided, however, no power purchase contract shall be extended as a result of the buy-out, buy-down, or renegotiation.~~

~~(3) Costs associated with contracts approved by the commission to settle issues associated with the Biennial Resource Plan Update may be collected through March 31, 2002; provided that only 80 percent of the balance of the costs remaining after December 31, 2001, shall be eligible for recovery.~~

~~(4) Nuclear incremental cost incentive plans for the San Onofre nuclear generating station shall continue for the full term as authorized by the commission in Decision 96-01-011 and Decision 96-04-059; provided that the recovery shall not extend beyond December 31, 2003.~~

~~(5) Costs associated with the exemptions provided in subdivision (a) of Section 374 may be collected through March 31, 2002, provided that only fifty million dollars (\$50,000,000) of the balance of the costs remaining after December 31, 2001, shall be eligible for recovery.~~

~~(6) Fixed transition amounts, as defined in subdivision (d) of Section 840, may be recovered from the customers specified in subdivision (a) of Section 841 until all rate reduction bonds associated with the fixed transition amounts have been paid in full by the financing entity.~~

~~(b) Be based on a calculation mechanism that nets the negative value of all above market utility-owned generation-related assets against the positive value of all below market utility-owned generation-related assets. For those assets subject to valuation, the valuations used for the calculation of the uneconomic portion of the net book value shall be determined not later than December 31, 2001, and shall be based on appraisal, sale, or other divestiture. The commission's determination of the costs eligible for recovery and of the valuation of those assets at the time the assets are exposed to market risk or retired, in a proceeding under Section 455.5, 851, or otherwise, shall be final, and notwithstanding Section 1708 or any other provision of law, may not be rescinded, altered or amended.~~

~~(c) Be limited in the case of utility-owned fossil generation to the uneconomic portion of the net book value of the fossil capital investment existing as of January 1, 1998, and appropriate costs incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered; provided that the additions are necessary to maintain the facilities~~

1 through December 31, 2001. All “going forward costs” of fossil
2 plant operation, including operation and maintenance,
3 administrative and general, fuel and fuel transportation costs, shall
4 be recovered solely from independent Power Exchange revenues
5 or from contracts with the Independent System Operator, provided
6 that for the purposes of this chapter, the following costs may be
7 recoverable pursuant to this section:

8 (1) Commission-approved operating costs for particular
9 utility-owned fossil powerplants or units, at particular times when
10 reactive power/voltage support is not yet procurable at
11 market-based rates in locations where it is deemed needed for the
12 reactive power/voltage support by the Independent System
13 Operator, provided that the units are otherwise authorized to
14 recover market-based rates and provided further that for an
15 electrical corporation that is also a gas corporation and that serves
16 at least four million customers as of December 20, 1995, the
17 commission shall allow the electrical corporation to retain any
18 earnings from operations of the reactive power/voltage support
19 plants or units and shall not require the utility to apply any portions
20 to offset recovery of transition costs. Cost recovery under the cost
21 recovery mechanism shall end on December 31, 2001.

22 (2) An electrical corporation that, as of December 20, 1995,
23 served at least four million customers, and that was also a gas
24 corporation that served less than four thousand customers, may
25 recover, pursuant to this section, 100 percent of the uneconomic
26 portion of the fixed costs paid under fuel and fuel transportation
27 contracts that were executed prior to December 20, 1995, and were
28 subsequently determined to be reasonable by the commission, or
29 100 percent of the buy-down or buy-out costs associated with the
30 contracts to the extent the costs are determined to be reasonable by
31 the commission.

32 (d) Be adjusted throughout the period through March 31, 2002,
33 to track accrual and recovery of costs provided for in this
34 subdivision. Recovery of costs prior to December 31, 2001, shall
35 include a return as provided for in Decision 95-12-063, as
36 modified by Decision 96-01-009, together with associated taxes.

37 (e) (1) Be allocated among the various classes of customers,
38 rate schedules, and tariff options to ensure that costs are recovered
39 from these classes, rate schedules, contract rates, and tariff
40 options, including self-generation deferral, interruptible, and

standby rate options in substantially the same proportion as similar costs are recovered as of June 10, 1996, through the regulated retail rates of the relevant electric utility, provided that there shall be a firewall segregating the recovery of the costs of competition transition charge exemptions such that the costs of competition transition charge exemptions granted to members of the combined class of residential and small commercial customers shall be recovered only from these customers, and the costs of competition transition charge exemptions granted to members of the combined class of customers, other than residential and small commercial customers, shall be recovered only from these customers.

(2) Individual customers shall not experience rate increases as a result of the allocation of transition costs. However, customers who elect to purchase energy from suppliers other than the Power Exchange through a direct transaction, may incur increases in the total price they pay for electricity to the extent the price for the energy exceeds the Power Exchange price.

(3) The commission shall retain existing cost allocation authority, provided the firewall and rate freeze principles are not violated.

SEC. 13. Section 367.5 is added to the Public Utilities Code, to read:

367.5. (a) The commission shall establish a Ratepayer Refund Account for each electrical corporation. All refunds recovered by an electrical corporation, either directly or indirectly by way of offset against amounts otherwise owed by the electrical corporation, resulting from any litigation or agreement relative to the charging of excessive costs for wholesale power by electric power generators and suppliers, shall be credited to the electrical corporation's account.

(b) All funds held by an electrical corporation that are required by this section to be credited to the Ratepayer Refund Account of the corporation are property of the ratepayers and shall be held in trust on their behalf.

SEC. 14. Section 367.7 of the Public Utilities Code is repealed.

367.7. (a) It is the intent of the Legislature in enacting this section to ensure that individual customers do not experience rate increases as a result of the allocation of transition costs, in accordance with paragraph (2) of subdivision (c) of Section 367.

~~(b) The commission shall implement a methodology whereby the Power Exchange energy credit for a customer with a meter installed on or after June 30, 2000, that is capable of recording hourly data is calculated based on the actual hourly data for that customer. The Power Exchange energy credit for a customer with a meter installed before June 30, 2000, that is capable of recording hourly data shall, at the election of the customer, on a one-time basis before June 30, 2000, be calculated based on either (1) the actual hourly data for that customer or (2) the average load profile for that customer class. If the customer fails to make an election, that customer's Power Exchange energy credit shall continue to be based on the average load profile for that customer class.~~

~~(c) Additional incremental billing costs incurred as a result of the methodology implemented by the commission pursuant to subdivision (b) may be recoverable through rates for that customer class, if the commission finds that the costs are reasonable.~~

~~(d) The methodology implemented by the commission pursuant to subdivisions (b) and (c) shall not result in any shifts in cost between customer classes and shall be consistent with the firewall provision set forth in subdivision (c) of Section 367.~~

SEC. 15. Section 368 of the Public Utilities Code is repealed.

~~368. Each electrical corporation shall propose a cost recovery plan to the commission for the recovery of the uneconomic costs of an electrical corporation's generation-related assets and obligations identified in Section 367. The commission shall authorize the electrical corporation to recover the costs pursuant to the plan if the plan meets the following criteria:~~

~~(a) The cost recovery plan shall set rates for each customer class, rate schedule, contract, or tariff option, at levels equal to the level as shown on electric rate schedules as of June 10, 1996, provided that rates for residential and small commercial customers shall be reduced so that these customers shall receive rate reductions of no less than 10 percent for 1998 continuing through 2002. These rate levels for each customer class, rate schedule, contract, or tariff option shall remain in effect until the earlier of March 31, 2002, or the date on which the commission authorized costs for utility generation-related assets and obligations have been fully recovered. The electrical corporation shall be at risk for those costs not recovered during that time period. Each utility shall amortize its total uneconomic costs, to the extent possible, such~~

1 that for each year during the transition period its recorded rate of
2 return on the remaining uneconomic assets does not exceed its
3 authorized rate of return for those assets. For purposes of
4 determining the extent to which the costs have been recovered, any
5 over-collections recorded in Energy Costs Adjustment Clause and
6 Electric Revenue Adjustment Mechanism balancing accounts, as
7 of December 31, 1996, shall be credited to the recovery of the
8 costs.

9 (b) The cost recovery plan shall provide for identification and
10 separation of individual rate components such as charges for
11 energy, transmission, distribution, public benefit programs, and
12 recovery of uneconomic costs. The separation of rate components
13 required by this subdivision shall be used to ensure that customers
14 of the electrical corporation who become eligible to purchase
15 electricity from suppliers other than the electrical corporation pay
16 the same unbundled component charges, other than energy, that a
17 bundled service customer pays. No cost shifting among customer
18 classes, rate schedules, contract, or tariff options shall result from
19 the separation required by this subdivision. Nothing in this
20 provision is intended to affect the rates, terms, and conditions or
21 to limit the use of any Federal Energy Regulatory
22 Commission-approved contract entered into by the electrical
23 corporation prior to the effective date of this provision.

24 (c) In consideration of the risk that the uneconomic costs
25 identified in Section 367 may not be recoverable within the period
26 identified in subdivision (a) of Section 367, an electrical
27 corporation that, as of December 20, 1995, served more than four
28 million customers, and was also a gas corporation that served less
29 than four thousand customers, shall have the flexibility to employ
30 risk management tools, such as forward hedges, to manage the
31 market price volatility associated with unexpected fluctuations in
32 natural gas prices, and the out-of-pocket costs of acquiring the risk
33 management tools shall be considered reasonable and collectible
34 within the transition freeze period. This subdivision applies only
35 to the transaction costs associated with the risk management tools
36 and shall not include any losses from changes in market prices.

37 (d) In order to ensure implementation of the cost recovery plan,
38 the limitation on the maximum amount of cost recovery for
39 nuclear facilities that may be collected in any year adopted by the
40 commission in Decision 96-01-011 and Decision 96-04-059 shall

1 ~~be eliminated to allow the maximum opportunity to collect the~~
2 ~~nuclear costs within the transition cap period.~~

3 ~~(c) As to an electrical corporation that is also a gas corporation~~
4 ~~serving more than four million California customers, so long as~~
5 ~~any cost recovery plan adopted in accordance with this section~~
6 ~~satisfies subdivision (a), it shall also provide for annual increases~~
7 ~~in base revenues, effective January 1, 1997, and January 1, 1998,~~
8 ~~equal to the inflation rate for the prior year plus two percentage~~
9 ~~points, as measured by the consumer price index. The increase~~
10 ~~shall do both of the following:~~

11 ~~(1) Remain in effect pending the next general rate case review,~~
12 ~~which shall be filed not later than December 31, 1997, for rates that~~
13 ~~would become effective in January 1999. For purposes of any~~
14 ~~commission approved performance-based ratemaking~~
15 ~~mechanism or general rate case review, the increases in base~~
16 ~~revenue authorized by this subdivision shall create no presumption~~
17 ~~that the level of base revenue reflecting those increases constitute~~
18 ~~the appropriate starting point for subsequent revenues.~~

19 ~~(2) Be used by the utility for the purposes of enhancing its~~
20 ~~transmission and distribution system safety and reliability,~~
21 ~~including, but not limited to, vegetation management and~~
22 ~~emergency response. To the extent the revenues are not expended~~
23 ~~for system safety and reliability, they shall be credited against~~
24 ~~subsequent safety and reliability base revenue requirements. Any~~
25 ~~excess revenues carried over shall not be used to pay any monetary~~
26 ~~sanctions imposed by the commission.~~

27 ~~(f) The cost recovery plan shall provide the electrical~~
28 ~~corporation with the flexibility to manage the renegotiation,~~
29 ~~buy-out, or buy-down of the electrical corporation's power~~
30 ~~purchase obligations, consistent with review by the commission to~~
31 ~~assure that the terms provide net benefits to ratepayers and are~~
32 ~~otherwise reasonable in protecting the interests of both ratepayers~~
33 ~~and shareholders.~~

34 ~~(g) An example of a plan authorized by this section is the~~
35 ~~document entitled "Restructuring Rate Settlement" transmitted to~~
36 ~~the commission by Pacific Gas and Electric Company on June 12,~~
37 ~~1996.~~

38 *SEC. 16. Section 369 of the Public Utilities Code is repealed.*

39 ~~369. The commission shall establish an effective mechanism~~
40 ~~that ensures recovery of transition costs referred to in Sections~~

1 367, 368, 375, and 376, and subject to the conditions in Sections
2 371 to 374, inclusive, from all existing and future consumers in the
3 service territory in which the utility provided electricity services
4 as of December 20, 1995; provided, that the costs shall not be
5 recoverable for new customer load or incremental load of an
6 existing customer where the load is being met through a direct
7 transaction and the transaction does not otherwise require the use
8 of transmission or distribution facilities owned by the utility.
9 However, the obligation to pay the competition transition charges
10 cannot be avoided by the formation of a local publicly owned
11 electrical corporation on or after December 20, 1995, or by
12 annexation of any portion of an electrical corporation's service
13 area by an existing local publicly owned electric utility.

14 This section shall not apply to service taken under tariffs,
15 contracts, or rate schedules that are on file, accepted, or approved
16 by the Federal Energy Regulatory Commission, unless otherwise
17 authorized by the Federal Energy Regulatory Commission.

18 *SEC. 17. Section 370 of the Public Utilities Code is repealed.*

19 370. The commission shall require, as a prerequisite for any
20 consumer in California to engage in direct transactions permitted
21 in Section 365, that beginning with the commencement of these
22 direct transactions, the consumer shall have an obligation to pay
23 the costs provided in Sections 367, 368, 375, and 376, and subject
24 to the conditions in Sections 371 to 374, inclusive, directly to the
25 electrical corporation providing electricity service in the area in
26 which the consumer is located. This obligation shall be set forth
27 in the applicable rate schedule, contract, or tariff option under
28 which the customer is receiving service from the electrical
29 corporation. To the extent the consumer does not use the electrical
30 corporation's facilities for direct transaction, the obligation to pay
31 shall be confirmed in writing, and the customer shall be advised
32 by any electricity marketer engaged in the transaction of the
33 requirement that the customer execute a confirmation. The
34 requirement for marketers to inform customers of the written
35 requirement shall cease on January 1, 2002.

36 *SEC. 18. Section 371 of the Public Utilities Code is repealed.*

37 371. (a) Except as provided in Sections 372 and 374, the
38 uneconomic costs provided in Sections 367, 368, 375, and 376
39 shall be applied to each customer based on the amount of
40 electricity purchased by the customer from an electrical

corporation or alternate supplier of electricity, subject to changes in usage occurring in the normal course of business.

(b) ~~Changes in usage occurring in the normal course of business are those resulting from changes in business cycles, termination of operations, departure from the utility service territory, weather, reduced production, modifications to production equipment or operations, changes in production or manufacturing processes, fuel switching, including installation of fuel cells pending a contrary determination by the California Energy Resources Conservation and Development Commission in Section 383, enhancement or increased efficiency of equipment or performance of existing self cogeneration equipment, replacement of existing cogeneration equipment with new power generation equipment of similar size as described in paragraph (1) of subdivision (a) of Section 372, installation of demand-side management equipment or facilities, energy conservation efforts, or other similar factors.~~

(c) ~~Nothing in this section shall be interpreted to exempt or alter the obligation of a customer to comply with Chapter 5 (commencing with Section 119075) of Part 15 of Division 104 of the Health and Safety Code. Nothing in this section shall be construed as a limitation on the ability of residential customers to alter their pattern of electricity purchases by activities on the customer side of the meter.~~

SEC. 19. Section 372 of the Public Utilities Code is amended to read:

372. (a) It is the policy of the state to encourage and support the development of cogeneration as an efficient, environmentally beneficial, competitive energy resource that will enhance the reliability of local generation supply, and promote local business growth. Subject to the specific conditions provided in this section, the commission shall determine the applicability to customers of uneconomic costs as specified in ~~Sections 367, 368, 375, and 376~~ Section 375. Consistent with this state policy, the commission shall provide that these costs shall not apply to any of the following:

(1) To load served onsite or under an over the fence arrangement by a nonmobile self-cogeneration or cogeneration facility that was operational on or before December 20, 1995, or by increases in the capacity of ~~such a~~ the facility to the extent that ~~such the~~ increased capacity was constructed by an entity holding

1 an ownership interest in or operating the facility and does not
2 exceed 120 percent of the installed capacity as of December 20,
3 1995, provided that prior to June 30, 2000, the costs shall apply to
4 over the fence arrangements entered into after December 20, 1995,
5 between unaffiliated parties. For the purposes of this subdivision,
6 “affiliated” means any person or entity that directly, or indirectly
7 through one or more intermediaries, controls, is controlled by, or
8 is under common control with another specified entity.
9 “Control” means either of the following:

10 (A) The possession, directly or indirectly, of the power to direct
11 or to cause the direction of the management or policies of a person
12 or entity, whether through an ownership, beneficial, contractual,
13 or equitable interest.

14 (B) Direct or indirect ownership of at least 25 percent of an
15 entity, whether through an ownership, beneficial or equitable
16 interest.

17 (2) To load served by onsite or under an over the fence
18 arrangement by a nonmobile self-cogeneration or cogeneration
19 facility for which the customer was committed to construction as
20 of December 20, 1995, provided that the facility was substantially
21 operational on or before January 1, 1998, or by increases in the
22 capacity of ~~such a~~ the facility to the extent that the increased
23 capacity was constructed by an entity holding an ownership
24 interest in or operating the facility and does not exceed 120 percent
25 of the installed capacity as of January 1, 1998, provided that prior
26 to June 30, 2000, the costs shall apply to over the fence
27 arrangements entered into after December 20, 1995, between
28 unaffiliated parties.

29 (3) To load served by existing, new, or portable emergency
30 generation equipment used to serve the customer’s load
31 requirements during periods when utility service is unavailable,
32 provided ~~such~~ the emergency generation is not operated in parallel
33 with the integrated electric grid, except on a momentary parallel
34 basis.

35 (4) After June 30, 2000, to any load served onsite or under an
36 over the fence arrangement by any nonmobile self-cogeneration or
37 cogeneration facility.

38 (b) Further, consistent with state policy, with respect to
39 self-cogeneration or cogeneration deferral agreements, the
40 commission shall do the following:

(1) Provide that a utility shall execute a final self-cogeneration or cogeneration deferral agreement with any customer that, on or before December 20, 1995, had executed a letter of intent (or similar documentation) to enter into the agreement with the utility, provided that the final agreement shall be consistent with the terms and conditions set forth in the letter of intent and the commission shall review and approve the final agreement.

(2) Provide that a customer that holds a self-cogeneration or cogeneration deferral agreement that was in place on or before December 20, 1995, or that was executed pursuant to paragraph (1) in the event the agreement expires, or is terminated, may do any of the following:

(A) Continue through December 31, 2001, to receive utility service at the rate and under terms and conditions applicable to the customer under the deferral agreement that, as executed, includes an allocation of uneconomic costs ~~consistent with subdivision (e) of Section 367.~~

(B) Engage in a direct transaction for the purchase of electricity and pay uneconomic costs consistent with ~~Sections 367, 368, 375, and 376~~ Section 375.

(C) Construct a self-cogeneration or cogeneration facility of approximately the same capacity as the facility previously deferred, ~~provided that the costs provided in Sections 367, 368, 375, and 376 shall apply consistent with subdivision (e) of Section 367,~~ unless otherwise authorized by the commission pursuant to subdivision (c).

~~(3) Subject to the fire wall described in subdivision (e) of Section 367 provide~~ Provide that the ratemaking treatment for self-cogeneration or cogeneration deferral agreements executed prior to December 20, 1995, or executed pursuant to paragraph (1) shall be consistent with the ratemaking treatment for the contracts approved before January 1995.

(c) The commission shall authorize, within 60 days of the receipt of a joint application from the serving utility and one or more interested parties, applicability conditions as follows:

(1) The costs identified in ~~Sections 367, 368, 375, and 376~~ Section 375 shall not, prior to June 30, 2000, apply to load served onsite by a nonmobile self-cogeneration or cogeneration facility that became operational on or after December 20, 1995.

(2) The costs identified in ~~Sections 367, 368, 375, and 376~~ Section 375 shall not, prior to June 30, 2000, apply to any load served under over the fence arrangements entered into after December 20, 1995, between unaffiliated entities.

(d) For the purposes of this subdivision, all onsite or over the fence arrangements shall be consistent with Section 218 as it existed on December 20, 1995.

(e) To facilitate the development of new microcogeneration applications, electrical corporations may apply to the commission for a financing order to finance the transition costs to be recovered from customers employing the applications.

(f) To encourage the continued development, installation, and interconnection of clean and efficient self-generation and cogeneration resources, to improve system reliability for consumers by retaining existing generation and encouraging new generation to connect to the electric grid, and to increase self-sufficiency of consumers of electricity through the deployment of self-generation and cogeneration, both of the following shall occur:

(1) The commission ~~and the Electricity Oversight Board~~ shall determine if any policy or action undertaken by the Independent System Operator, directly or indirectly, unreasonably discourages the connection of existing self-generation or cogeneration or new self-generation or cogeneration to the grid.

(2) If the commission ~~and the Electricity Oversight Board find~~ finds that any policy or action of the Independent System Operator unreasonably discourages, the connection of existing self-generation or cogeneration or new self-generation or cogeneration to the grid, the commission ~~and the Electricity Oversight Board~~ shall undertake all necessary efforts to revise, mitigate, or eliminate that policy or action of the Independent System Operator.

SEC. 20. Section 373 of the Public Utilities Code is repealed.

~~373. (a) Electrical corporations may apply to the commission for an order determining that the costs identified in Sections 367, 368, 375, and 376 not be collected from a particular class of customer or category of electricity consumption.~~

~~(b) Subject to the fire wall specified in subdivision (e) of Section 367, the provisions of this section and Sections 372 and 374 shall apply in the event the commission authorizes a~~

~~nonbypassable charge prior to the implementation of an Independent System Operator and Power Exchange referred to in subdivision (a) of Section 365.~~

SEC. 21. Section 376 of the Public Utilities Code is repealed.

~~376. To the extent that the costs of programs to accommodate implementation of direct access, the Power Exchange, and the Independent System Operator, that have been funded by an electrical corporation and have been found by the commission or the Federal Energy Regulatory Commission to be recoverable from the utility's customers, reduce an electrical corporation's opportunity to recover its utility generation-related plant and regulatory assets by the end of the year 2001, the electrical corporation may recover unrecovered utility generation-related plant and regulatory assets after December 31, 2001, in an amount equal to the utility's cost of commission-approved or Federal Energy Regulatory Commission approved restructuring-related implementation programs. An electrical corporation's ability to collect the amounts from retail customers after the year 2001 shall be reduced to the extent the Independent System Operator or the Power Exchange reimburses the electrical corporation for the costs of any of these programs.~~

SEC. 22. Section 377 of the Public Utilities Code is amended to read:

377. (a) The commission shall continue to regulate the facilities for the generation of electricity owned by any public utility prior to January 1, 1997, that are subject to commission regulation until the owner of those facilities has applied to the commission to dispose of those facilities and has been authorized by the commission under Section 851 to undertake that disposal. Notwithstanding any other provision of law, no facility for the generation of electricity owned by a public utility may be disposed of prior to January 1, 2006. The commission shall ensure that public utility generation assets remain dedicated to service for the benefit of California ratepayers utility retained generation remain dedicated for the benefit of the public utility's bundled service customers. Nothing in this section may be construed to compel any electrical corporation to renew or renegotiate an expiring contract. For purposes of this section, "utility retained generation" means utility owned generation, qualifying facility contracts, and other bilateral contracts entered into prior to

1 January 17, 2001. This section does not apply to the transfer or
2 sale of generation plants that are located outside the state and are
3 owned exclusively by companies not based in the state.

4 (b) The commission shall establish rates designed to provide
5 the public utility electrical corporation with a reasonable
6 opportunity to recover the reasonable costs of producing power
7 and ancillary services from utility retained generation assets
8 dedicated to the service of bundled service customers. The rates
9 shall provide a reasonable opportunity for the public utility
10 electrical corporation to recover reasonable operating costs and
11 capital costs, including a reasonable return of and on the public
12 utility electrical corporation's depreciated book cost of
13 investments in utility retained generation assets.

14 (c) "Operating costs" include all customary categories of
15 operating costs, consistent with historical regulatory practices,
16 including any costs charged by the Independent System Operator
17 to the electrical corporation as the generator or scheduling
18 coordinator of the power.

19 (d) "The electrical corporation's depreciated book cost of
20 investment in utility retained generation assets" shall initially be
21 set at the amounts recorded on its books of account as of December
22 31, 2001, as verified and approved by the commission. The cost of
23 major capital additions and improvements to a public utility's
24 retained generation assets shall be reviewed and approved by the
25 commission, in the manner set forth in Sections 1005 and 1005.5,
26 in advance of the public utility being allowed to invest in major
27 capital additions or improvements.

28 (e) The commission shall continue to determine the
29 appropriate means for recovery of decommissioning costs.

30 SEC. 23. Section 378 of the Public Utilities Code is repealed.

31 ~~378. The commission shall authorize new optional rate~~
32 ~~schedules and tariffs, including new service offerings, that~~
33 ~~accurately reflect the loads, locations, conditions of service, cost~~
34 ~~of service, and market opportunities of customer classes and~~
35 ~~subclasses.~~

36 SEC. 24. Section 397 of the Public Utilities Code is repealed.

37 ~~397. (a) Notwithstanding subdivision (a) of Section 368, to~~
38 ~~ensure the continued safe and reliable provision of electric service~~
39 ~~during the transition to competition, and to limit the effect of fuel~~
40 ~~price volatility in electric rates paid by California consumers, it is~~

~~in the public interest to allow an electrical corporation which is also a gas corporation and served fewer than four million customers as of December 20, 1995, to file with the commission a rate cap mechanism which shall include a Fuel Price Index Mechanism requiring limited adjustments in an electrical corporation's authorized System Average Rate in effect on June 10, 1996, to reflect price changes in the fuel market. The commission shall authorize an electrical corporation to implement a rate cap mechanism which includes a Fuel Price Index Mechanism provided the following criteria are met:~~

~~(1) The Fuel Price Index Mechanism shall be based on the Southern California Border Index price for natural gas as published periodically in Natural Gas Intelligence Magazine. The "Starting Point" of the Fuel Price Index Mechanism shall be defined as the California Border Index price as published in Natural Gas Intelligence for January 1, 1996.~~

~~(2) The Fuel Price Index Mechanism shall include a "deadband" defined as a price range for natural gas that is any price up to 10 percent higher, or lower, than the Starting Point.~~

~~(3) The electrical corporation shall not file for a change in its authorized System Average Rate unless the California Border Index price, on a 12-month, rolling average basis, is outside the deadband. If the published California Border Index is outside of the deadband, the electrical corporation shall increase, or decrease, its authorized System Average Rate by an amount equal to the product of 25 percent multiplied by the percentage by which the 12-month rolling average natural gas price is higher, or lower, than the deadband.~~

~~(4) In no case shall an electrical corporation's authorized System Average Rate under the Fuel Price Index Mechanism exceed the average of the authorized system average rates for the two largest electrical corporations as of June 10, 1996.~~

~~(5) This section shall become inoperative on December 31, 2001.~~

SEC. 25. Section 454.1 of the Public Utilities Code, as added by Section 6 of Chapter 1040 of the Statutes of 2000, is amended and renumbered to read:

~~454.1.~~

454.5. (a) Reasonable expenditures by transmission owners that are electrical corporations to plan, design, and engineer

1 reconfiguration, replacement, or expansion of transmission
2 facilities are in the public interest and are deemed prudent if made
3 for the purpose of facilitating competition in electric generation
4 markets, ensuring open access and comparable service, or
5 maintaining or enhancing reliability, whether or not these
6 expenditures are for transmission facilities that become
7 operational.

8 (b) The commission ~~and the Electricity Oversight Board shall~~
9 ~~jointly~~ shall facilitate the efforts of the state's transmission owning
10 electrical corporations to obtain authorization from the Federal
11 Energy Regulatory Commission to recover reasonable
12 expenditures made for the purposes stated in subdivision (a).

13 (c) Nothing in this section alters or affects the recovery of the
14 reasonable costs of other electric facilities in rates pursuant to the
15 commission's existing ratemaking authority under this code or
16 pursuant to the Federal Power Act (41 Stat. 1063; 16 U.S.C. Secs.
17 791a, et seq.). The commission may periodically review and adjust
18 depreciation schedules and rates authorized for an electric plant
19 that is under the jurisdiction of the commission and owned by
20 electrical corporations and periodically review and adjust
21 depreciation schedules and rates authorized for a gas plant that is
22 under the jurisdiction of the commission and owned by gas
23 corporations, consistent with this code.

24 SEC. 26. Section 761.7 is added to the Public Utilities Code,
25 to read:

26 761.7. Any electrical corporation or holding company, as
27 defined in Section 79b(a)(7)(A) of Title 15 of the United States
28 Code, that owns, controls, operates, or manages a public utility
29 shall be subject to the jurisdiction, control, and regulation of the
30 commission for the limited purpose of monitoring and enforcing
31 any promises, commitments, conditions, or written representations
32 made to the commission or to the ratepayers of the public utility.

33 SEC. 27. Section 857 is added to the Public Utilities Code, to
34 read:

35 857. No electrical corporation may execute a sale,
36 assignment, transfer, or other disposition of assets with a value in
37 excess of ten million dollars (\$10,000,000) unless the California
38 Consumer Power and Conservation Financing Authority is
39 granted a right of first refusal to purchase the assets at a price
40 equivalent to the proposed transfer price.

1 SEC. 28. *Section 858 is added to the Public Utilities Code, to*
2 *read:*

3 858. *Any gain or loss on sale associated with the sale, transfer,*
4 *or disposition of assets that have been included in the rate base of*
5 *an electrical corporation shall be allocated exclusively to the*
6 *ratepayers served by the electrical corporation. Gain or loss on*
7 *sale shall be calculated as the difference between the transfer or*
8 *sale price and the net depreciated book value of the assets at the*
9 *time of the transfer.*

10 SEC. 29. *The provisions of this act are severable. If any*
11 *provision of this act or its application is held invalid, that*
12 *invalidity shall not affect other provisions or applications that can*
13 *be given effect without the invalid provision or application.*

14 SEC. 30. No reimbursement is required by this act pursuant
15 to Section 6 of Article XIII B of the California Constitution
16 because the only costs that may be incurred by a local agency or
17 school district will be incurred because this act creates a new crime
18 or infraction, eliminates a crime or infraction, or changes the
19 penalty for a crime or infraction, within the meaning of Section
20 17556 of the Government Code, or changes the definition of a
21 crime within the meaning of Section 6 of Article XIII B of the
22 California Constitution.

